

## AGREEMENT

This Agreement (“**Agreement**”) is entered into by and between the Old Copper Company, Inc. f/k/a J.C. Penney Company (“**JCP**”), Walmart Inc. (“**Walmart**”), and the California Regional Water Quality Control Board, Central Valley Region (“**Regional Board**”), hereinafter referred to collectively as the “**Parties**.”

## RECITALS

- A. The Site is a Former Firestone Tire Company Site (GeoTracker ID # T060670055), located at the Florin Mall Shopping Center, 6939 65th Street, Sacramento (the “**Site**”), which is subject to corrective action for release(s) from an underground storage tank (“**UST**”) which occurred in the early 1980s. As of the date of this Agreement, the Regional Board is the lead agency supervising the corrective action. Previously, the County of Sacramento (“**County**”) was acting as lead supervising corrective action until 2008, when oversight was transferred to the Regional Board. The Site is currently owned by Walmart.
- B. Walmart acquired the Site in 2005 and did not cause or contribute to the UST release at the Site. Walmart has facilitated ongoing remediation efforts since 2008 by way of an Access Agreement to allow for ongoing monitoring and soil vapor extraction activities by JCP.
- C. JCP was originally designated by the County as the “primary responsible party,” and has been performing investigation and remediation activities at the Site since the early/mid-1990s. Previously-designated “responsible parties” include the following: Walmart (by virtue of its subsequent ownership of the Site); General Electric Pension Trust; Skysan Limited Partnership; Oates Florin Mall LLC; and Bridgestone/Firestone, Inc. There may be additional “responsible parties” with respect to the Site.
- D. The Regional Board has determined that the Site may be relatively close to closure under the California State Water Resources Control Board (“**State Board**”) Low-Threat Underground Storage Tank Case Closure Policy (“**Low-Threat Closure Policy**”). The remaining work to be done at the Site includes: (1) continued operations of the air sparge system to determine if benzene concentrations continue to decrease and remain below 3,000 µg/L; and (2) re-surveying of the monitoring well network to determine whether the plume has been adequately delineated (collectively, the “**Work**”).
- E. JCP and certain of its affiliates and subsidiaries (the “**Debtors**”) filed for bankruptcy protection under chapter 11 of title 11 of the United States Code on May 15, 2020 in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”). The Bankruptcy Court entered an order approving the joint administration of the Debtors’ chapter 11 cases (the “**Bankruptcy**”) under lead case number 20-20182 on May 15, 2020 (Case No. 20-20182, Docket No. 2). The Bankruptcy Court entered an order approving the sale of substantially all of JCP’s assets free and clear of liens, claims, encumbrances, and interests on November 10, 2020 (Case No. 20-20182, Docket No. 1814 (the “**Sale Order**”). The Bankruptcy Court entered an order confirming the Debtors’ chapter 11 plan on December 14, 2020 (Case No. 20-20182, Docket No. 2169), as amended by subsequent order on December 16, 2020 (Case No. 20-20182, Docket No. 2190 (such order, the “**Confirmation Order**,” and the chapter 11 plan attached thereto as Ex. A, as amended, supplemented, or otherwise modified from time to time, the “**JCP Plan**”). The Effective Date of the JCP Plan (as defined therein) occurred on January 30, 2021 (see Case No. 20-20182, Docket No. 2508). A

final decree closing JCP's individual Bankruptcy case was entered on June 30, 2021 (Case No. 20-20182, Docket No. 3167). In accordance with the Sale Order, the Confirmation Order, and the JCP Plan, substantially all of the assets of the Debtors, including JCP, were sold free and clear of liens, claims, encumbrances, and interests, and the remaining JCP entity is a wind-down entity with the authority to resolve the remaining Bankruptcy matters including reconciliation of claims. Once this wind-down is complete, the Plan Administrator (as that term is defined in the JCP Plan) will formally wind up the remaining entities with the relevant Secretaries of State. There will be no corporate successors of JCP

- F. Resultantly, the Regional Board will be directing one or more of the remaining "responsible parties" to step into JCP's shoes and complete the corrective action to closure in accordance with the Low-Threat Closure Policy.
- G. The Parties are unaware of any claims having ever been submitted to the State Board's UST Cleanup Fund for the Site. Accordingly, the Site may be eligible for reimbursement from the Fund.
- H. The Regional Board, in entering into this Agreement, has determined that entering into this Agreement is in the best interest of the people of the State of California.

## **AGREEMENT**

### **1. No Admissions**

- a. This Agreement does not constitute and shall not be interpreted or construed as an admission by either JCP or Walmart of any liability under any federal, state, or local law or that the Parties are in violation of or ever have violated any laws, rules, regulations and/or ordinances. No Party to this Agreement, by the execution hereof, admits any fact, responsibility, fault or liability in connection with the Site.
- b. While this Agreement shall not serve as an admission, Walmart agrees not to contest its responsibility for the Work at the Site pursuant to California Health & Safety Code section 25296.10 and California Water Code section 13304.(See Section 5 regarding limited scope of Agreement.)

### **2. Entire Agreement**

This Agreement constitutes the entire understanding between the Parties with respect to the Site.

### **3. Covenants by the Regional Board**

In consideration of JCP's payment to Walmart under Section 6 of this Agreement and Walmart's agreement to complete the Work, from and after the effective date of this Agreement, the Regional Board covenants and agrees:

- a. To release JCP for any and all claims, regardless of when such claims may have accrued, penalties or demands related to costs incurred or to be incurred for or in connection with the investigation, response and remediation of the Site.

- b. To forever release JCP, including its current and former corporate officers, directors and shareholders, for any liability related to costs or claims for response actions at the Site or for any other liabilities under common law or any other federal, state or local environmental laws related to response actions at the Site.

#### 4. Covenants by Walmart

In consideration of receipt by Walmart of JCP's payment, from and after the effective date of this Agreement, Walmart covenants and agrees:

- a. To complete the corrective action for the Site in accordance with the State Board's Low-Threat Closure Policy.
- b. To forever release JCP, including its current and former corporate officers, directors and shareholders, for any liability related to costs or claims for response actions at the Site or for any other liabilities under common law or any other federal, state or local environmental laws related to response actions at the Site.
- c. To forever release JCP for any and all claims whether now known or unknown and regardless of when such claim accrued, penalties or demands related to costs incurred or to be incurred for or in connection with the investigation, response and remediation of the Site.
- d. To comply with the Regional Board's directives related to supervision of the Work pursuant to Water Code section 13267, subdivision (b)(1), insofar as such directives are consistent with applicable law (including applicable State Board plans and policies).
- e. Not seek reimbursement from the State Board's UST Cleanup Fund until it has expended the amount equal to the funds it has received from JCP under this Agreement.

#### 5. Scope

This Agreement and the contemplated Work is strictly limited in scope to existing UST releases at the Site and shall not apply to any future releases or contamination at the Site, either known or unknown to the Parties.

#### 6. Payment and Funds

With regard to the funds addressed under this Agreement:

- a. JCP agrees to make a payment in the amount of Eight Hundred and One Thousand Four Hundred and Thirty-Three and 44/100 Dollars (**\$801,433.44**) to Walmart ("**Payment**"), which amount represents the estimated budget to complete the Work, plus legal and administrative expenses as mutually agreed upon by JCP and Walmart. The Payment shall be made by certified check or Federal wire transfer to Walmart within seven (7) business days of the Effective Date of this Agreement.
- b. The Regional Board has no right to control, direct or supervise Walmart's expenditure

of the Payment.

- c. Upon closure of the Site in accordance with the Low-Threat Closure Policy, Walmart may retain any remaining funds from the Payment.
- d. The Payment is not received by Walmart for use or expenditure on behalf of the Regional Board.
- e. In the event that the Work and corrective action exceeds the Payment, Walmart may submit claims for reimbursement from the State Board's UST Closure Fund, in accordance with applicable law (including State Board plans or policies).

7. Notice

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by: (i) certified or registered mail, postage prepaid, return receipt requested, (ii) personal delivery, or (iii) a recognized overnight carrier that provides proof of delivery, and shall be addressed as follows:

**If to Walmart:**

Walmart Inc.  
Attn: Legal Department  
(Ref: Sacramento, CA; Store No. 2735)  
2608 SE J Street  
Bentonville, Arkansas 72716-5560

**If to Regional Board:**

California Regional Water Quality Control  
Board, Central Valley Region  
Attn: Program Manager, Underground  
Storage Tanks Cleanup Program  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114

**With a Copy to:**

Gresham Savage Nolan & Tilden, PC  
Attn: Tracy M. Inscore, Esq.  
(Ref: Sacramento, CA; Store No. 2735)  
550 E. Hospitality Lane, Suite 300  
San Bernardino, CA 92408-4205

**With a copy to:**

California State Water Resources Control  
Board, Office of Chief Counsel  
Attn: Region 5 Lead Attorney  
1001 I Street, 22nd Floor  
Sacramento, CA 95814

**If to JCP:**

Deborah Rieger-Paganis  
909 Third Avenue, 30th Floor  
New York, NY 10022

**With a copy to:**

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Notices shall be deemed effective upon receipt or rejection only.

8. Choice of Law

This Agreement shall be governed and interpreted in accordance with the laws of the State of California, without recourse to any conflict-of-law doctrine that would suggest application of the law of another state.

9. Effective Date

This Agreement is effective as of the date of execution by the last Party to execute it.

10. Reimbursement from UST Cleanup Fund

- a. It is the understanding of the Regional Board that the Site qualifies for reimbursement from the State Board's UST Cleanup Fund to the same extent as any other similarly-situated site would qualify for reimbursement. Such claims are approved or rejected by State Board staff in accordance with applicable statutes, regulations and policies. The Regional Board lacks authority or discretion to provide any assurances that a particular claim will be paid.
- b. Accordingly, the Regional Board makes no warranties, guarantees or assurances that (i) the Site actually qualifies for reimbursement from the State Board's UST Cleanup Fund, (ii) that Walmart will actually receive reimbursements from the Fund, or (iii) that any particular claims for reimbursement will be approved.

11. Successors and Assigns

This Agreement may not be assigned without the prior written consent of the non-assigning Party, which consent may not be unreasonably withheld or delayed. This Agreement shall be binding upon the Parties; and inure to the benefit of Walmart and its successors and permitted assigns, and the Regional Board and its successors. Except as provided in Recital E, JCP shall have no successors or assigns under this Agreement. "Successors" of the Regional Board shall be those agencies designated by statute with respect to the subject matter of this Agreement.

12. Parties Bound

Subject to Section 11 above (successors and assigns), the Parties to this Agreement are limited to those specified herein. In particular, this Agreement does not extend to or otherwise bind any other agencies of the State of California.

### 13. No Third-Party Beneficiaries

Apart from the Sections 3b and 4b (regarding current and former JCP corporate officers, directors and shareholders), this Agreement is not entered into by the Parties for the benefit of any other parties (e.g., other “responsible parties” with respect to the Site).

### 14. Reservation of Rights

Notwithstanding Section 4a (Walmart covenants to achieve closure under State Water Board Low-Threat Closure Policy), the Regional Board nevertheless reserves the right to direct other “responsible parties” to perform investigations and corrective action in accordance with the California Water Code and the California Health & Safety Code. Nothing in this Agreement shall be construed as limiting the Regional Board’s authority with respect to other “responsible parties” for the Site.

(signatures on next page)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective date set forth above.

**Old Copper Company, Inc. f/k/a J. C. Penney Company, Inc.**

  
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By Deb Rieger-Paganis

Title VP, Restructuring

Date November 18, 2021

**Walmart Inc.**

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**California Regional Water Quality Control Board, Central Valley Region**

\_\_\_\_\_

By Patrick Pulupa

Title Executive Officer

Date \_\_\_\_\_